Before the

MASSACHUSETTS DEPARTMENT

OF TELECOMMUNICATIONS AND ENERGY

Inquiry by the Department of Telecommunications and Energy Pursuant to Section 271 of the Telecommunications Act of 1996 into the Compliance Filing of New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts as Part of its Application to the Federal Communications Commission for Entry into the In-Region InterLATA (Long Distance) Telephone Market	)	Docket No. 99-271

INITIAL COMMENTS OF QWEST COMMUNICATIONS CORPORATION

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INITIAL COMMENTS OF

QWEST COMMUNICATIONS CORPORATION

Qwest Communications Corporation ("Qwest") hereby files its initial comments in the above-captioned docket pursuant to the procedures and schedule established in the June 29, 1999 Notice of the Massachusetts Department of Telecommunications and Energy ("Department").

I. Introduction

On May 24, 1999, New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts ("BA-MA") filed with this Department its application for authority to provide interLATA service in Massachusetts ("Compliance Filing"), alleging it is in full compliance with each of the fourteen points which comprise the competitive checklist contained in Section 271 of the Telecommunications Act of 1996 ("1996 Act" or "Act")./ Qwest files these comments on BA-MA's Section 271 Compliance Filing in order to assist the Department with its inquiry as to whether BA-MA has fully complied with the requirements of Section 271 such that the local market in Massachusetts is irreversibly open to competition.

Qwest is a nationwide, facilities-based multimedia communications company offering a full range of voice, data, video, and information services domestically and internationally. Qwest has recently completed the construction of a $2.5 billion state-of-the-art, high-capacity, advanced fiber optic telecommunications network across the United States. Qwest is certified to provide local exchange service in Massachusetts and in other states throughout the country. In order to bring the full benefits of its network's advanced services capabilities to consumers, Qwest must have the ability to obtain nondiscriminatory, cost-based access to the incumbent local network. Premature interLATA entry by BA-MA, before BA-MA has fulfilled its local market-opening obligations under Section 271 of the Act, would harm the development of a competitive communications market throughout Massachusetts.

Qwest recognizes that this Department has worked long and hard to bring about the conditions for local competition to develop in Massachusetts. The Department deserves tremendous credit for these efforts. BA-MA also has made progress in complying with the market-opening requirements of Section 271, but its work is not yet complete. Until it is, BA-MA should not be seeking this Department's approval of its interLATA entry bid.

This filing identifies several critical issues that would impair the ability of Qwest and other carriers to effectively compete in the local market in Massachusetts. Most notably, BA-MA's Compliance Filing is based in part on promises and expectations of compliance, not actual compliance. This strategy is particularly apparent in BA-MA's discussion of operations support systems ("OSS") and collocation requirements.

BA-MA points to the existence of local competition as evidence that it has done its job. It makes much of the number of access lines that CLECs "have…throughout the state."/ However, when viewed in relation to the total number of access lines in Massachusetts, BA-MA's numbers tell a very different story. In total, the access lines served by competitive carriers in Massachusetts, according to BA-MA's numbers, constitute a mere 5.7 percent of the total number of switched access lines in the state / and only 5.2 percent of total access lines in the state. / Despite the best efforts of competitive carriers, BA-MA's failure to comply with its obligations under Sections 251, 252, and 271 of the 1996 Act / continues to limit the progress that competitors have been able to make in Massachusetts.

These comments focus on five important issues: (1) BA-MA's failure to show actual compliance with Section 271; (2) the lack of third party OSS testing in Massachusetts; (3) BA-MA's failure to comply with the Department's performance standards; (4) combinations of unbundled network elements ("UNEs") and the UNE platform ("UNE-P"); and (5) BA-MA's failure to comply with the Federal Communications Commission's ("FCC's") collocation rules. Qwest relies on other parties to identify additional problems in BA-MA's Compliance Filing.

Qwest includes as an attachment to these comments (1) its list of disputed issues of fact; and (2) its suggested appropriate grouping of issues for consideration at the technical sessions and panel hearings.

II. PROMISES AND EXPECTATIONS of Compliance WITH SECTION 271 Are not sufficient

Though BA-MA goes to great lengths to identify some of the areas in which it believes it has met the Section 271 requirements, BA-MA's Compliance Filing acknowledges its lack of actual compliance with those requirements. Rather than demonstrating that BA-MA *has* met the requirements of Section 271, BA-MA simply asserts that it *will* meet the requirements of Section 271 at some later date. / Specifically, BA-MA either promises to satisfy various requirements or states that it expects the steps it has taken to eventually bring it into compliance. Such promises and expectations, however, are nothing more

than a continuation of BA-MA's attempts to delay or avoid fulfillment of its market-opening obligations under the 1996 Act.

As the FCC has made clear, promises and expectations are not sufficient to satisfy Section 271. / A Regional Bell Operating Company's ("RBOC's") Section 271 filing must be complete as filed with the FCC, / meaning the application must demonstrate actual compliance with Section 271, not simply progress toward compliance. This Department cannot approve BA-MA's application until it is complete—that is, until it demonstrates actual, not promised, compliance.

iII. BA-MA's oss and Customer care performance does not meet the requirements of section 271

It is quite telling that BA-MA addresses its OSS for Competing Carriers in the 38-page affidavit of Stuart Miller, yet only speaks to third party testing in the last 2 paragraphs before the conclusion—and *only* to acknowledge that the BA-MA tests have not even been initiated. / Rather, BA-MA proposes that its OSS third party testing would be based on the third party testing conducted of Bell Atlantic-New York's ("BA-NY") systems—testing that has identified many problems and discrepancies with the Bell Atlantic OSS systems which have yet to be resolved.

BA-MA states that the KPMG Peat Marwick test of BA-NY's OSS should be the basis of the testing of BA-MA's OSS because the "systems, interfaces and processes tested in New York are the same or similar to the systems, interfaces and processes used in Massachusetts." / Thus, once the BA-NY test is complete and the final report is available, it would be filed in this record and an incremental test to supplement the New York findings would be conducted specifically for Massachusetts.

Even if Bell Atlantic ultimately corrects all of the problems identified to date with its OSS in New York does not mean that Bell Atlantic's OSS will be satisfactory in Massachusetts. Bell Atlantic admits that there are differences between its OSS in New York and its OSS in Massachusetts. / Moreover, Bell Atlantic's employees in Massachusetts do not have the same level of experience with OSS provisioning that Bell Atlantic's New York employees now have thanks to the testing process in New York. If the Department nevertheless adopts Bell Atlantic's approach, it should make clear that the testing of BA-MA's OSS cannot begin until all of the testing and re-testing of BA-NY's OSS in New York has been completed—with satisfactory results—and until BA-NY can provide several months worth of satisfactory data from actual commercial usage of its OSS in New York. Only then would it be reasonable or feasible to conduct the incremental testing of BA-MA's OSS and customer care to address the additional problems likely to be identified in Massachusetts.

It is important for the Department to recognize in considering BA-MA's proposed approach that the KPMG Peat Marwick Draft Final Report in New York has identified a variety of continuing problems with BA-NY's OSS, many of which appear in critical

OSS functions. The "Live CLEC Functional Evaluation" portion of the report, for example, concludes that

> although BA-NY has made significant progress in implementing procedures to allow effective interfaces with the CLECs, [BA-NY's] systems and procedures are still flawed in several major areas. These procedural and system flaws are demonstrated most clearly for services that require a higher level of coordination such as UNE-loop Hot Cut Orders. /

The Live CLEC Functional Evaluation in New York tested 30 OSS criteria. Only five of those test criteria were satisfied. / Eleven were not satisfied / and thirteen, described as "satisfied with qualifications," were only partially satisfied. / The test criteria that were either not satisfied or only partially satisfied included critically important OSS functions, such as BA-NY's provisioning of Loop Hot Cut orders, collocation orders, and expanded extended link ("EEL") orders. / These test criteria also included the ability of competitors to use BA-NY's Web GUI. / Although, as Mr. Miller states in his affidavit, BA-NY is working to resolve the problems identified by KPMG, BA-NY has not adequately addressed these or other problems identified in KPMG's Draft Final Report and thus, its OSS and Customer Care Performance has yet to meet the requirements of Section 271. / It remains to be seen whether and when BA-NY will in fact take steps to correct the deficiencies identified by KPMG and, most importantly, whether the steps it takes will actually correct those deficiencies.

Bell Atlantic has responded to the "customer care" deficiencies identified by KPMG in the New York test in two ways. First, BA-NY has simply refused to accept some of KPMG's findings. / It follows, therefore, that BA-NY has not taken steps to correct the problems that KPMG—an independent third party—associated with those findings.

Second, BA-NY has either claimed that it has made changes that it believes "should" address the problems reported by KPMG, or has promised to make changes at some future date that will address those problems. / Unfortunately, BA-NY's belief that a change "should" address a problem and BA-NY's promises to correct problems in the future are not sufficient. As discussed above, the FCC has made clear that promises and expectations of compliance with Section 271 are not acceptable. An RBOC, such as BA-NY or BA-MA, must demonstrate that it has actually satisfied the requirements of Section 271 before it can be eligible for in-region, interLATA entry. The problems identified by KPMG in its testing of BA-NY's OSS must be corrected and re-tested. In doing such re-testing, moreover, it is essential that Bell Atlantic's OSS receive not only testing of individual ordering processes, but also end-to-end testing at the end of the evaluation process in order to determine Bell Atlantic's ability to process orders from submission to completion.

It also is essential that, following successful completion of such third-party tests, Bell Atlantic be required to provide several months of data from *actual commercial usage*.

Without such data, there is no way to ensure that the OSS Bell Atlantic provides to competitors is actually at parity with the OSS it provides to itself when service is provided to real customers, at commercial volumes, and over live lines. In addition, such data is necessary to ensure that the OSS Bell Atlantic provides to competitors is operable equally for both large and small carriers.

It is evident that the KPMG test results in New York show not only that BA-NY's OSS is insufficient to meet the requirements of Section 271, but also that the same problems would exist for BA-MA as well since, according to the Miller Affidavit, the systems, interfaces and processes are "the same or similar." / Moreover, as BA-MA's Compliance Filing admits, BA-NY has still not met the OSS and customer care requirements for Section 271 for New York. It may be months before the New York problems are corrected. The corrections must then be re-tested to assure that BA-NY has actually corrected the deficiencies noted, and then put to actual commercial use for a trial period with actual commercial volumes. *Only then*—after all the New York testing and actual commercial trials are completed—will it be reasonable or feasible to conduct the incremental test of BA-MA's OSS and customer care to address the individual discrepancies and problems for Massachusetts.

Finally, the Department should take note that the New York test was instrumental both in showing that BA-NY's employees needed additional training and experience with BA-NY's OSS and in allowing the BA-NY employees to gain experience with the systems, processes and interfaces which comprise BA-NY's OSS. The BA-MA employees were not part of the New York tests and thus do not have the same level of practice and training as the New York employee base. This less experienced BA-MA employee base, on the whole, will likely require more training before the Massachusetts OSS processing teams will be able to meet the performance standards required to achieve Section 271 compliance.

Until Bell Atlantic has (1) corrected each of the problems identified by KPMG in the New York tests; (2) corrected any deficiencies identified in the yet-to-commence Massachusetts incremental tests; and (3) demonstrated—through both end-to-end re-testing and several months of data from actual commercial usage *in Massachusetts*—that the OSS it provides to competitors is equal in quality to the OSS it provides to itself, BA-MA cannot satisfy Section 271.

iV. BA-MA Must DemonStrate Compliance with the Department's Performance Standards Before the Department Can Endorse BA-MA's Filing

Massachusetts's local exchange market cannot be considered "irreversibly open to competition," as contemplated by the Department of Justice, / until BA-MA has demonstrated compliance with the performance standards and remedies adopted in the Consolidated Arbitrations. / To date, however, BA-MA has failed to demonstrate such compliance.

For example, in the Affidavit of Kenneth L. Garbarino, BA-MA admits that has met or exceeded the required standard for the provisioning of UNEs only 67% of the time. / Further, Mr. Garbarino admits that BA-MA met or exceeded the 90% standard for barely 66% of the UNE Ordering Standards for January 1999. / BA-MA simply dismisses four of six missed standards as unimportant because these apparently were due in part to unanticipated volumes. / Yet, it is *precisely* to assure that BA-MA can handle commercial volumes accurately and adequately that such standards are in place. BA-MA also has the audacity to further trivialize missed standards by stating simply that it has added personnel to address these orders and by asserting that since the following month saw a *4%* increase in success (from 66% to 70%), it is reasonable to expect BA-MA will meet all future performance standards. / According to BA-MA, then, the Department and the industry is expected to take BA-MA's word and accept its assurances of future compliance based on a track record of poor performance.

To add insult to injury, BA-MA also admits in its Compliance Filing that some of the standards required in the Consolidated Arbitrations /—specifically the flow-through measurements—are still under development. /

Standards are established to determine—and ensure—compliance. BA-MA will not be eligible to obtain interLATA authority in Massachusetts until it can demonstrate *full* compliance with *all* of the Department's performance standards. Once BA-MA obtains interLATA authority in Massachusetts, its incentive to remain in compliance with Section 271 will be significantly reduced, despite the Department's performance remedies. It is critical, therefore, that the Department require BA-MA to comply with all of the Department's performance standards *prior to* receiving Section 271 authority. Only when BA-MA has demonstrated such compliance can it be eligible for in-region, interLATA authority under Section 271.

v. the supreme court's decision requires BA-MA to provide the UNE PLATFORM without restriction

In AT&T Corp. v. Iowa Utilities Board, the Supreme Court expressly upheld the FCC's rule prohibiting ILECs such as BA-MA from separating existing combinations of network elements. / The Department also concluded this year that the current lack of an FCC-prescribed list of UNEs under Section 251(d)(2) does not relieve ILECs of their obligation to provide competitors with combinations of UNEs, including the UNE platform. / BA-MA, therefore, must provide competitors with access to combinations of network elements, including the UNE-P, on an unrestricted basis.

BA-MA states that it will comply with the Supreme Court's holding and the Department's corresponding order, unless the FCC determines, on remand under Section 251(d)(2), that ILECs like BA-MA need no longer provide access to "certain previously required unbundled elements (like local switching)." / In that case, BA-MA states that it will provide the UNE platform only for POTS and BRI-ISDN lines, only for the provision of service to residential customers and for the provision of service to business

customers in central offices where there are no collocation arrangements, and only for three years (until January 2003). /

BA-MA is mistaken, however, in asserting that the FCC's network element remand proceeding will have any impact on BA-MA's obligation—if it wants to satisfy Section 271—to offer the UNE platform without restriction in Massachusetts. This is so because Section 271 requires BA-MA to provide competitors with five of the seven network elements in the FCC's mandatory list. / These network elements include loops, switching, transport, signaling and call-related databases, and operator and directory assistance services. / BA-MA also must provide competitors with the remaining network elements in the FCC's original mandatory list—namely OSS and the network interface device ("NID"). Under the FCC's rules, BA-MA must provide OSS whenever a carrier purchases a UNE, regardless of whether OSS is itself considered a UNE. / BA-MA also must provide the NID to competitors because the NID is generally offered by BA-MA on an integrated basis with the loop, and thus is part of the loop, unless a carrier requests otherwise. In addition, the NID would satisfy any reasonable reading of the "necessary and impair" standards in Section 251(d)(2). /

BA-MA has agreed, moreover, to provide competitors with all of the UNEs in the FCC's original list pending completion of the FCC's remand proceeding. / Although BA-MA has sent a "clarification letter" to the FCC stating that it has not agreed to make network elements available in combination, the Supreme Court's holding does not give BA-MA this option. /

The state of the law and regulation surrounding combinations of UNEs is now conclusively settled. Under the Supreme Court's decision, BA-MA must provide competitors with existing combinations of network elements for all services, all facilities, and all classes of customers if BA-MA wants to obtain in-region, interLATA authority under Section 271. The Supreme Court's remand cannot change this fact because it will not affect the UNEs that an RBOC such as BA-MA must provide under Section 271, and because it involves only the definition of mandatory network elements, not the duty to provide them in combined state, which is unquestioned. As BA-MA is required to make the network elements required for the platform available under Section 271 and the FCC's rules (and as BA-MA also has agreed to make these network elements available beyond the context of Section 271), BA-MA must comply with the Supreme Court's holding, and this Department's order, and make the UNE platform available to competitors without restriction.

VI. BA-MA Has not complied with the fCC'S collocation REQUIREMENTS

With respect to collocation, BA-MA relies once again on promises of compliance rather than actual compliance. As an initial matter, BA-MA admits that competitors currently have access to less than two thirds of BA-MA's loops or access lines in Massachusetts. / BA-MA states that competitors will have greater access in the future, but admits that even then such access will be deficient. /

In addition, on March 31, 1999, the FCC issued an order imposing on ILECs such as BA-MA new requirements for the provision of collocation to competitors ("Collocation Order"). / BA-MA's discussion of its compliance with this order is essentially limited to the statement that it "will comply with the terms of that Order" and that it is currently developing prices, security arrangements, ordering, billing, etc. to implement the requirements of the Collocation Order. / As made clear above, however, promises of compliance are not sufficient. BA-MA must demonstrate that it has actually complied with the FCC's order before it can satisfy Section 271.

To bring itself into compliance with the FCC's order, it appears that BA-MA will have to make significant changes in its collocation offerings. For example, BA-MA will have to add to its collocation options a cageless collocation alternative that:

- permits competitors to collocate in any unused space in the ILEC's premises, to the extent technically feasible, without requiring the construction of a room, cage, or similar structure; without requiring a separate entrance to the competitor's space; and without requiring competitors to collocate in a room or isolated space separate from BA-MA's equipment; /

- permits CLECs to have direct access to their equipment, rather than requiring CLECs to use an intermediate interconnection arrangement in lieu of direct connection to the ILEC's network, if technically feasible; / and

- permits CLECs to purchase collocation space in single-bay increments (increments small enough to collocate a single rack, or bay, of equipment). /

In addition, BA-MA must provide CLECs with access to their collocated equipment 24 hours a day, seven days a week, *without* requiring either a security escort of any kind or delaying a CLEC employee's entry into the ILEC's premises by requiring, for example, the presence of an ILEC employee. /

BA-MA must also, *inter alia*, implement certain policies concerning space exhaustion. For example, after denying a CLEC physical collocation due to space limitations, BA-MA must allow representatives of the CLEC to tour the premises. / In addition, BA-MA must allow such CLEC representatives to tour the entire premises in question, not just the room in which the space was denied, and BA-MA must permit such tours free of charge and within 10 days of the denial of space. / Furthermore, BA-MA must remove obsolete unused equipment from its premises upon reasonable request by a CLEC or upon the order of the Department. /

BA-MA has not demonstrated in its Compliance Filing that its current collocation offerings satisfy these requirements and thus meet the requirements of Section 271. / BA-MA must demonstrate that it has *actually* complied with all of these requirements—not

merely promise to comply—before it can be deemed to have satisfied Section 271. Until it demonstrates that compliance, it will not be eligible for interLATA entry in Massachusetts.

VII. CONCLUSION

BA-MA has made progress toward satisfying the requirements of Section 271, but BA-MA must still complete its market-opening efforts. Promises to achieve compliance are not enough. The 1996 Act is clear: only after BA-MA has actually satisfied the requirements of Section 271 will BA-MA be eligible to receive interLATA authority in Massachusetts. For the foregoing reasons, the Department should dismiss BA-MA's premature and incomplete Section 271 submission.

Respectfully submitted,

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ATTACHMENT A

Disputed Issues of Fact:

1. Whether BA-MA's promises of compliance with Section 271 are sufficient or whether BA-MA must demonstrate actual compliance with Section 271 before the Department can issue a positive recommendation on BA-MA's Section 271 application.

2. Whether BA-MA has demonstrated that its operations support systems ("OSS") and customer care performance satisfy item numbers (i) and (ii) of the Section 271 competitive checklist. 47 U.S.C. §§ 271(c)(2)(B)(i) and (ii).

3. Whether BA-MA has satisfied the Department's performance standards in its provisioning of unbundled network elements ("UNEs") or interconnection arrangements to competitors and thus has satisfied item numbers (i) or (ii) of the Section 271 competitive checklist. 47 U.S.C. §§ 271(c)(2)(B)(i) and (ii).

4. Whether BA-MA's position on its obligation to offer UNE combinations and the UNE platform is consistent with the requirements of item numbers (ii), (iv), (v), and (vi) of the Section 271 competitive checklist (47 U.S.C. §§ 271(c)(2)(B)(ii), (iv), (v), and (vi)) and with the requirements of the Supreme Court's decision in AT&T Corp. v. Iowa Utilities Board, ___ U.S. ___, 119 S.Ct. 721, 736-38 (1999).

5. Whether BA-MA has complied with the FCC's collocation requirements (In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 98-147, FCC 99-48

(rel. March 31, 1999)) and thus has satisfied item numbers (i) and (ii) of the Section 271 competitive checklist. 47 U.S.C. §§ 271(c)(2)(B)(i) and (ii).

Suggested Issue Groupings for Consideration at the Technical Sessions and Panel Hearings:

(1) Provisioning of UNEs and UNE combinations, including the UNE platform.

(2) OSS and Customer Care.

(3) Collocation.

(4) Performance Standards and Remedies.

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